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IN THE  
APPELLATE COURT OF ILLINOIS  
SECOND DISTRICT

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THE PEOPLE OF THE STATE	)	Appeal from the Circuit Court
OF ILLINOIS,	)	of Lake County.
	)	
Plaintiff-Appellee,	)	
	)	
v.	)	No. 09-CF-3530
	)	
JUAN R. GARZA,	)	Honorable
	)	Daniel B. Shanes,
Defendant-Appellant.	)	Judge, Presiding.

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PRESIDING JUSTICE BURKE delivered the judgment of the court.  
Justices McLaren and Hudson concurred in the judgment.

**ORDER**

¶ 1 *Held:* (1) The trial court did not abuse its discretion in dismissing for cause an accepted juror, as the court relied not only on hearsay comments that the juror had acted inappropriately but also on inappropriate conduct that the court had observed; in any event, defendant showed no prejudice, as he did not even contend that the jury that convicted him was less than impartial; (2) the trial court did not abuse its discretion in refusing defendant's jury instruction that would have explained when possession is voluntary, as the evidence did not support a theory that defendant's possession was knowing but involuntary and defendant did not tender an accompanying instruction that would have explained the relevance of voluntariness; in any event, defendant showed no prejudice, as the jury would not have found involuntary possession.

¶ 2 After a jury trial, defendant, Juan R. Garza, was convicted of unlawful possession of a weapon by a felon (720 ILCS 5/24-1.1(a) (West 2008)) and sentenced, as a Class X felon (see 730 ILCS 5/5-4.5-95(b) (West 2008)), to 10 years' imprisonment. On appeal, he contends that (1) during jury selection, the trial court erred in dismissing an already-chosen juror; and (2) the court erred in refusing to instruct the jury on when possession is voluntary (see Illinois Pattern Jury Instructions, Criminal, No. 4.15 (4th ed. 2000) (IPI Criminal 4th No. 4.15)). We affirm.

¶ 3 Defendant was tried with his codefendant, Iris Chagoya. Both were charged with possessing a gun that the police found on the center console of a car that defendant was driving, with Chagoya riding in the front passenger seat. On the first day of jury selection, Juror No. 314 was among the initial group of prospective jurors. Questioned individually, he said that he could judge the case solely on the facts and the applicable law. Asked whether he owned guns, he responded that he and his wife did; asked what they used the guns for, he said, "Unauthorized entry into my house," which drew some laughter. Eventually, both parties accepted Juror No. 314.

¶ 4 The next day, soon after jury selection resumed, the judge excluded the other prospective jurors from the courtroom and addressed Juror No. 314. The following colloquy ensued:

"THE COURT: One of the important things about jurors is that they approach their duties with the mind-set of they don't know anything about the case. And they wait for the evidence, they follow the law, and in that way they decide the case. Do you understand what I'm saying so far?

JUROR NO. 314: Yes, sir.

THE COURT: The important part of a jury is that they don't walk into the trial thinking, before they hear anything, whether they want someone on one side or the other to win or lose. Do you understand that?

JUROR NO. 314: Yes, sir.

THE COURT: I received information from our jury commission downstairs that they observed you telling other prospective jurors that the defendant's not guilty and—

JUROR NO. 314: No, sir.

THE COURT: —trying to talk with them about the case.

JUROR NO. 314: No. That's false. I never said nothing about nobody being guilty or not guilty.

THE COURT: Certainly jurors talk about jury service and why they're here \*\*\*. Every judge tells jurors not to talk about the case, but there's probably a few things about jury service that aren't about the case specifically, and my guess is jurors talk about those.

JUROR NO. 314: Uh-huh.

THE COURT: Is it possible that [the] jury commission saw you talking with other jurors about jury service in some way?

JUROR NO. 314: They might have heard us talking about what happened here. That's about it. And then we talked about the food.

THE COURT: Okay. The food's one thing. Anybody who works here talks about the food. What was the other thing you were talking about?

JUROR NO. 314: They were just asking us about—you know, we were talking about all the questions they asked us. That was about it. Nothing pertaining to the case, just the questions that they asked us.”

¶ 5 The judge allowed the parties to question Juror No. 314. Defendant’s attorney, Kevin Rosner, and Chagoya’s attorney, Scott Spaulding, declined. The assistant State’s Attorney, Victor O’Block, the judge, and Rosner then engaged in the following colloquy with Juror No. 314:

“MR. O’BLOCK: You said that \*\*\* you did discuss. Who were you discussing with?

JUROR NO. 314: Just with the people that were around me. That was it, the people that sat around me, the three people. That’s all we talked about. And whoever I said he was guilty [*sic*], I don’t know what they’re talking about, and that kind of upsets me, so—I mean, that’s a flat-out lie.

MR. O’BLOCK: And so you were discussing the questions with anyone other than the people surrounding you there?

JUROR NO. 314: No, just the people that were right here.

MR. O’BLOCK: And you were discussing that in jury commission?

JUROR NO. 314: Yeah. Uh-huh.

MR. O’BLOCK: And you didn’t discuss anything else about the case?

JUROR NO. 314: No. I don’t even know anything about the case. None of us know[s] anything about the case.

THE COURT: My point exactly.

JUROR NO. 314: Yeah. So, I mean, I don’t understand. Somebody’s bored.

MR. O'BLOCK: You—I'm sorry—I didn't mean to interrupt you.

JUROR NO. 314: Well, I don't understand why they would say that. You know, but—I don't know. Maybe they've got too much time on their hands.

MR. ROSNER: Did you talk about how you could possibly get out of jury service or talk with some of the other jurors about that?

JUROR NO. 314: I laughed about the comment, because it seemed to shock everybody, about my comment about the gun, so I was laughing about that. That's what I laughed about \*\*\* my comment on why I have guns.”

The judge then stated:

“Juror 314, I appreciate your helping me out with this. One of the things I have to do as a judge, of course, is work with the jury commission people. They handle the mechanics of rounding up potential jurors and then funneling them to the courtrooms. And, of course, I pick it up from when they go here. Since I'm not downstairs, it's always interesting for the judge to kind of have another set of eyes, which would be you, as to how things work down there.

What I'm going to do in this case is excuse you from further service here.”

¶ 6 Both defendant and Chagoya objected to the dismissal. The following comments ensued:

“MR. O'BLOCK: “[W]hile the juror was answering questions of the Court and counsel, what I would describe as a kind of flippant attitude regarding the questions, regarding the—what he was—what he was accused of. And I would also note that yesterday it appeared that he was talking to jurors around him. About what, I don't know. But I think

in general—the general attitude of the juror should be noted as not something that the record may properly show, but I think that’s important in consideration for removing him for cause.

THE COURT: Juror 314 is excused for cause. Part of the reason that I did that is based upon the demeanor which I observed yesterday. He was repeatedly talking in court in the jury box with the jurors around him, like he said he was doing today. He was doing it while court was in session. He was doing it while we were talking to other prospective jurors. He was doing it while we had sidebars. He had to be admonished by the deputy quietly to stop from doing it. Today he was talking with the jurors while I was just briefly dealing with the issues that we had this morning so far.

If he’s doing that in court, it’s not much of [a] leap to imagine what he was doing downstairs in the jury assembly out of court. And while some of the concerns that were raised were based on information related by [the] jury commission, [the] jury commission, after all, is an arm of the court \*\*\* and the information has some presumption of reliability, I suppose.

But even absent that, going back to fundamental principles, the purpose of a jury is to secure 12 impartial citizens to try the case. The parties have a right and the Court has the obligation to ensure that the jurors selected are, in fact, impartial individuals. That said, no party has the right to have any particular juror sit on his or her jury.”

Noting that he had the discretion to excuse, *sua sponte*, a juror for cause, the judge continued:

“Here, based upon my observations of Juror 314—his testimony, particularly this morning’s testimony, and not only what he said, but the way he said it—and I had the opportunity to observe his manner and demeanor while testifying, not only the words he

spoke, but the way he spoke them, the pauses, the inflexion [*sic*], the tone, and all the rest—I am more than satisfied that these two defendants can find 12 fair and impartial people to try this case without Juror 314 \*\*\*.”

¶ 7 We turn to the evidence at trial. Sergeant Scot Chastain of the Waukegan police department testified on direct examination as follows. On September 3, 2009, he and detectives George Valko and Garcia (first name not given in the record) were on patrol in an unmarked squad car. Chastain was driving. On Lake Street just east of West Street, he drove around a car that was partly in the roadway. Chastain recognized defendant in the driver’s seat and had received information that defendant’s driver’s license had been revoked. Chastain kept driving, then parked and waited for defendant to pass him so that he could stop defendant’s car. Defendant soon drove east on Lake. Chastain followed him and called for backup. On Besley, defendant turned north; he was “constantly” looking into his mirror toward Chastain. When defendant got to Clarke, he “rolled through” a stop sign and stopped in the middle of the intersection. He was looking around. He then pulled into a driveway. Chastain activated the squad car’s emergency lights, and defendant stopped.

¶ 8 Chastain testified that both defendant and Chagoya made “furtive movements,” *i.e.*, “fast shuffling-type movements.” Chastain approached and asked defendant for his license. Defendant said that he had no license. Chastain ordered him out of the car. He asked defendant why his pants were unzipped; defendant had no answer. Chastain and Garcia patted down defendant. Chastain was concerned for his safety; although he was 5 feet, 11 inches tall and weighed about 230 pounds, defendant was “bigger.”

¶ 9 On cross-examination by Rosner, Chastain testified as follows. Defendant had been driving a Honda Pilot SUV. When Chastain first saw defendant, the Pilot’s driver’s window was rolled

down and defendant was speaking with a young man. On Besley, defendant was looking into the sideview and rearview mirrors, mostly the former. Chastain did not see Chagoya look back at him. He did not see anything in either person's hands. As he approached the car, he did not see defendant move. Eventually, the backup officers arrived and searched the Pilot.

¶ 10 On cross-examination by Spaulding, Chastain testified that he had briefly lost sight of the Pilot. He saw the "furtive movements" "mostly when [he] was behind [defendant] on Besley." Chastain explained, "We pulled up right behind him, he started moving around." Right before Chastain got to Clarke, he saw defendant "moving his head around," and, when defendant pulled into the driveway, "there was lots of movement."

¶ 11 Drew Summers, a Waukegan police detective, testified as follows. He assisted with the stop of defendant's car. When he arrived, Valko told him that a gun had been found in the Pilot. Approaching the car, Summers saw two or three bullet holes on the exterior driver's side. The driver's door was open, and Summers saw a gun sitting on the cup-holder area of the center console. A black shirt was lying underneath the gun and was also wrapped partway over it. The tag indicated that the shirt was size "3XL." Valko photographed the gun, and Summers collected it and ascertained that it was loaded. The photographs of the gun were admitted into evidence.

¶ 12 The parties stipulated that, according to records from the Secretary of State's office, Chagoya was the Pilot's registered owner on September 3, 2009.

¶ 13 Valko testified next for the State. His description of the events leading to the stop was consistent with Chastain's testimony. When the police stopped the Pilot, Valko, sitting in the front passenger seat, saw defendant "making movements \*\*\* shifting around in his seat." Defendant was "shifting back and forth" and "shifting towards the right or to the center of the vehicle and the center

console area.” Chagoya was making similar movements, both back and forth and toward the center console area. Valko could not tell whether they were reaching for anything.

¶ 14 Valko testified that, after the stop, he exited his squad car and approached the Pilot’s passenger side. After defendant and Chagoya exited the car, Valko leaned in and reached toward the center console area, as he had seen defendant and Chagoya making movements in that direction. The black shirt was lying on the console. Valko grabbed one end of the shirt and pulled it back, revealing a handgun. The gun was loaded, and the handle was closer to the driver than to the passenger, with the barrel pointed toward the passenger side.

¶ 15 The State rested. Neither defendant put on any evidence. At the conference on jury instructions, Rosner tendered IPI Criminal 4.15, which reads, “Possession is a voluntary act if the person knowingly procured or received the thing possessed, or was aware of his control of the thing for a sufficient time to have been able to terminate his possession.” IPI Criminal 4th No. 4.15. The instruction tracks section 4-2 of the Criminal Code of 1961 (720 ILCS 5/4-2 (West 2008)). O’Block objected that the State did not have to prove voluntariness, but only knowledge (see 720 ILCS 5/24-1.1(a) (West 2008)), a different mental state. Rosner replied that the State had to prove “possession for a period of time, and that’s what this says \*\*\* control of the thing for a sufficient time to have been able to terminate his possession.” The trial judge agreed with O’Block and rejected the tendered instruction.

¶ 16 The jury convicted defendant. The trial court denied his posttrial motion, which raised both of the issues now on appeal. After the court sentenced defendant to 10 years in prison and denied his motion to reconsider sentence, he timely appealed.

¶ 17 On appeal, defendant contends first that the trial court erred in dismissing Juror No. 314, *sua sponte*, after both parties had accepted him and he had been seated. Defendant argues that, by dismissing the juror in reliance on unspecified hearsay statements from the “jury commission,” allegations that Juror No. 314 flatly denied, the court abused its discretion and denied him a fair trial. The State counters that the trial judge relied not only on the information from the jury commission but also on his direct observations of Juror No. 314 in the courtroom during the jury-selection process. The State reasons that the trial judge, not this court, could best ascertain whether Juror No. 314’s deportment showed that he was not fit to serve on the jury, and that the judge had sufficient grounds to remove the juror for cause. We agree with the State.

¶ 18 The conduct of *voir dire* is primarily the responsibility of the trial judge, who has broad discretion in deciding whether to excuse a prospective juror for cause. See *People v. Szudy*, 262 Ill. App. 3d 695, 708 (1994); *People v. Edwards*, 167 Ill. App. 3d 324, 328 (1988). We shall find reversible error only if the trial court abused its discretion and thwarted the selection of an impartial jury. *People v. Williams*, 164 Ill. 2d 1, 16 (1994); *Edwards*, 167 Ill. App. 3d at 331.

¶ 19 It is important to recognize that, here, defendant is not contending that the trial court improperly accepted a juror who was biased against him, but that the court improperly excused a juror who (he argues) had not been shown to be unqualified. Thus, defendant does not suggest that the trial court’s action posed any added risk that the jury that eventually tried defendant was biased against him. Moreover, defendant does not argue that the trial court excused Juror No. 314 for a constitutionally impermissible reason, such as his views on the death penalty (obviously not pertinent here). Thus, we do not rely on case authority falling into either of these categories. See *Szudy*, 262 Ill. App. 3d at 709 (distinguishing that case from the two types just noted). As a result, defendant’s

citations to *People v. Kirchner*, 194 Ill. 2d 502, 520-24 (2000), and *People v. Szabo*, 94 Ill. 2d 327, 353-57 (1983), are inapposite, as both cases dealt with the unique rules for death-penalty cases.

¶ 20 We have found relatively few opinions addressing whether the trial court reversibly erred by excusing a prospective juror on grounds that did not implicate constitutional limitations on the trial court's control of *voir dire*. Those opinions that we have found do not aid defendant.

¶ 21 In *Williams*, the defendant contended that the trial court erred in excusing a prospective juror after concluding that, during *voir dire*, she had failed to answer truthfully when asked whether she had ever been involved in criminal case. The supreme court held that the trial court had not abused its discretion, as the judge's reasonable belief that the prospective juror had been untruthful supported excusing her. The court reasoned that deciding the veracity of a prospective juror's testimony is "solely within the sound discretion of the circuit court." *Id.* at 17.

¶ 22 In *People v. Peebles*, 155 Ill. 2d 422 (1993), the trial judge excused three venirepersons for cause. One was a news reporter who admitted that he might be sympathetic to journalists, in a case in which journalists would likely provide evidence. The other two had inadvertently seen a newspaper article on the crime for which the defendant was on trial. The supreme court held that the trial court properly excused all three prospective jurors. *Id.* at 462-63. There was reason to doubt that the first venireperson would be impartial (*id.*), and the exclusion of venirepersons who had learned matters related to the trial but irrelevant to their duties "avoid[ed] possible prejudice to either side and attempt[ed] to insure a fair trial" (emphasis added) (*id.* at 464).

¶ 23 In *Szudy*, the trial court excused three prospective jurors because they gave incorrect answers when asked whether they had ever been involved in a criminal case. The appellate court held that

the trial court had acted well within its discretion by refusing to seat people who had been less than truthful when asked a simple and highly pertinent question. *Szudy*, 262 Ill. App. 3d at 709.

¶24 In *Edwards*, the defendant was charged with voluntary manslaughter, attempted murder, and armed robbery. The trial court excluded a prospective juror, who had admitted that he would have difficulty putting aside his personal feelings against firearms and following the law. Affirming the defendant's convictions, the appellate court explained that the trial court acted properly. The court noted the "superior position of a trial judge to ascertain the meaning which a venireman intends to convey by his responses" (*Edwards*, 167 Ill. App. 3d at 330) and concluded that the venireman's apparent unwillingness to follow the law (and thus the trial court's instructions) amply supported the exclusion. *Id.* at 331. Moreover, the defendant had failed to show prejudice, as he had not established that the exclusion of the one venireman denied him a fair and impartial jury. *Id.*

¶25 In *People v. Singletary*, 73 Ill. App. 3d 239 (1979), the trial court excused a prospective juror, who had been the victim of two crimes similar to the one for which the defendant was on trial and whose husband, an attorney, had told the State's Attorney's office that she would like to be a juror in the case. The appellate court held that the trial court had acted well within its discretion, given the trial judge's reasonable suspicion that the juror might not be able to abstain from discussing the case with her husband. *Id.* at 246. Also, the court held that the defendant had failed to show that he had suffered prejudice; indeed, the court suggested, he might have been better off without a victim of two serious crimes on the jury. *Id.* at 247.

¶26 Finally, we note that the trial court does not abuse its discretion in excusing a juror who is inattentive or otherwise appears incapable of carrying out his responsibilities, even if the juror has

already been seated. See *People v. Jones*, 369 Ill. App. 3d 452, 455-56 (2006); *People v. Veal*, 58 Ill. App. 3d 938, 971 (1978).

¶ 27 We cannot say that the trial court abused its discretion in excusing Juror No. 314. We might have more concern had the trial judge relied solely on the off-record hearsay comments of the ill-described “jury commission.” However, the judge explained clearly that, even lacking that information, he would still have excused Juror No. 314, based on his inappropriate behavior in the courtroom. Notably, Juror No. 314 continued to talk to other jurors even after the deputy admonished him to stop. The judge could reasonably conclude that a juror who could not show the proper respect for the judicial process—or for his fellow jurors—had poor prospects of carrying out his duties as a juror properly. Thus, as in *Peeples*, the trial judge could conclude that his action was in both parties’ interest in a jury that would fulfill its serious calling. We are surely in no position to say that the “cold record” refutes the judge’s assessment of Juror No. 314’s demeanor, tone of voice, and conduct. Moreover, defendant has shown no prejudice from the exclusion of Juror No. 314. He does not even contend that the jury that did hear his case was less than impartial.

¶ 28 Having rejected defendant’s first claim of error, we turn to his second and remaining claim: that the trial court abused its discretion by refusing to tender IPI Criminal 4.15, which would have instructed the jury that possession “is a voluntary act if the person knowingly procured or received the thing possessed, or was aware of his control of the thing for a sufficient time to have been able to terminate his possession.” IPI Criminal 4th No. 4.15. Defendant acknowledges that, to find that he possessed the gun that the police recovered from the Pilot’s center console area, the jury had to find only that he “*knowingly* possessed” the gun (emphasis added) (720 ILCS 5/24-1.1(a) (West 2008)). However, citing *People v. Larry*, 218 Ill. App. 3d 658 (1991), he contends that the

instruction on voluntariness was necessary to prevent the jury from improperly convicting him if it found that he knowingly possessed the gun only after it was too late, or otherwise impossible, for him to terminate his possession. We hold that defendant has shown neither an abuse of discretion nor prejudice.

¶ 29 A defendant is entitled to an instruction on his theory of the case if the instruction has some foundation in the evidence. *People v. Jones*, 175 Ill. 2d 126, 131-32 (1997). On appeal, we decide whether the trial court abused its discretion in refusing to give the instruction. *People v. Davis*, 213 Ill. 2d 459, 475 (2004). Here, we hold that the trial court did not abuse its discretion, because (1) the instruction lacked a foundation in the evidence; and (2) providing the instruction would likely have confused the jury. Further, we hold that defendant has shown no prejudice.

¶ 30 In *Larry*, the defendant was convicted of possessing a gun that police officers found partially concealed underneath the mat on the driver's side of the car that the defendant was driving. The defendant introduced evidence that he had borrowed the car from a friend; that, shortly afterward, he parked and the police stopped the car; and that he had not known that the gun was in the car and that the first time that he saw the gun was after he was taken to the police station. *Larry*, 218 Ill. App. 3d at 660-61. At the instructions conference, the defendant tendered IPI Criminal 4th No. 4.15, but the trial court refused to give the instruction. On appeal, the court held that the trial court erred, as there was evidence from which a rational jury could have found that the defendant had been aware of the gun, but not for long enough to enable him to terminate his possession. *Id.* at 665-66.

¶ 31 In a case that the State cites, *People v. Redmond*, 73 Ill. App. 3d 160 (1979), the defendant was convicted of unlawfully possessing drugs that the police found on his person and in a purse he had been carrying. The defendant tendered two instructions pertinent here: the first stated that a

material element of every crime is a voluntary act (*id.* at 176; see Illinois Pattern Jury Instructions, Criminal, No. 4.14 (1st ed. 1968)) and the second was IPI Criminal 4th No. 4.15, which read the same then as it does now (*Redmond*, 73 Ill. App. 3d at 177; see Illinois Pattern Jury Instructions Criminal, No. 4.15 (1st ed. 1968) (IPI Criminal No. 4.14)). The trial court refused to give either instruction. The appellate court held that the trial court's decision was proper. The defendant himself had testified that he had not known about the contraband at all, and there was no other evidence from which the jury could reasonably have found that he had at some point become aware that the drugs were there but had not had sufficient time to terminate his possession. *Redmond*, 73 Ill. App. 3d at 177.

¶ 32 In *Larry*, the court found reversible error in the failure to give the voluntary possession instruction even though defendant denied knowledge of the gun and there was no other evidence that the defendant discovered the gun at the last moment. Whereas, in *Redmond*, the court held that the failure to give the same instruction was not erroneous where there was no evidence to support the theory that the defendant discovered the drugs at the last moment. We believe that the *Redmond* decision is the better reasoned of the two and choose to follow it. See also *People v. Bui*, 381 Ill. App. 3d 397, 426 (2008) (same instruction properly refused based on the lack of evidence that the defendant's possession was involuntary).

¶ 33 Here, there was no basis for the jury to conclude that defendant actually discovered the gun only at the last moment. The evidence showed that, although the Pilot was not defendant's, when the police stopped the car the gun was wrapped in the size-3XL black shirt, concealed from view. There was no evidence that, at some point, defendant suddenly realized that there was a gun nearby

but by then had no opportunity to dispossess himself of the gun. The evidence did not provide the foundation for the instruction that defendant tendered.

¶ 34 Moreover, the situation here is even less favorable for reversal than was the situation for the defendant in *Redmond*. There, the defendant tendered two instructions. The second was identical to the current IPI Criminal 4th No. 4.15, defining when an act is voluntary. However, the defendant also tendered an instruction that would have told the jury that a voluntary act is a material element of any offense (see IPI Criminal No. 4.14). Thus, had both of the instructions been tendered, the jury would not only have learned when possession is voluntary, but also why the issue of voluntariness was relevant to deciding the defendant's guilt or innocence, even though the definition of the offense charged mentioned only the mental state of knowledge.

¶ 35 Here, by contrast, defendant tendered only the instruction explaining when possession is voluntary, but no instruction explaining why the issue of voluntariness was pertinent to deciding whether defendant had committed an offense that is defined only in terms of knowledge, not voluntariness.<sup>1</sup> Had the trial court granted defendant's request and tendered only IPI Criminal 4th No. 4.15, the jury would have been told when possession is voluntary, but it would have been given no idea why voluntariness had anything to do with deciding the case. The result would have been, at best, jury confusion. A trial court does not abuse its discretion in refusing to tender an instruction

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<sup>1</sup>The instruction that the *Redmond* defendant tendered has since been revised; the current version addresses only when an omission is a "voluntary act." It does not state that a voluntary act is a material element of every offense. See IPI Criminal 4th No. 4.14. Conceivably, though, defendant could have tendered a non-IPI instruction based on section 4-1 of the Criminal Code of 1961 (720 ILCS 5/4-1 (West 2008)), which was the basis for the instruction in *Redmond*.

that would serve only to confuse the jury. See *People v. Atherton*, 261 Ill. App. 3d 1012, 1017 (1994).

¶ 36 Finally, we agree with the State that any error was harmless. Even were there some factual basis for the jury to conclude that this case presented a situation akin to that in *Larry*, we see little likelihood that the jury would have so found. The evidence showed that, although defendant did not own the car, he drove it, with a loaded handgun wrapped in a dark size-3XL shirt within his reach. The gun's handle was pointed toward him; he had made furtive movements in the direction of the gun just before the stop; and there were bullet holes on the exterior of the driver's side of the Pilot.

¶ 37 The jury would have had a difficult time concluding that the T-shirt belonged to anyone other than defendant, whom Chastain, who was 5 feet, 11 inches tall and weighed 230 pounds, described as "bigger" than himself. The jury would not likely have dwelled long on the possibility that some other very large man, or a friend who had access to his clothing, put the gun into the car, concealed it in a shirt, and allowed defendant to drive around with the gun within easy reach and the handle pointed toward him. The tendered instruction would not have made a difference even had the trial court given it.

¶ 38 For the foregoing reasons, the judgment of the circuit court of Lake County is affirmed.

¶ 39 Affirmed.